

Pt. 1980, Subpt. E, App. H

7 CFR Ch. XVIII (1-1-09 Edition)

FmHA or its successor agency under Public Law 103-354 (Title) \_\_\_\_\_

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354)<sup>5</sup>

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within \_\_\_\_\_ days.

(Name of Lender)

By:

(Signature of Lender)

<sup>6</sup>

(Signature for Borrower)

<sup>1</sup>Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

<sup>2</sup>Insert the period prescribed in the applicable FmHA or its successor agency under Public Law 103-354 regulation. For B&I loans "quarterly" and for CP loans "annually" will be inserted in this space.

<sup>3</sup>Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

<sup>4</sup>FmHA or its successor agency under Public Law 103-354 will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

<sup>5</sup>Return completed and signed copy of this form to FmHA or its successor agency under Public Law 103-354 issuing office.

<sup>6</sup>Required in B&I, CP, and RH-MF cases, not in other cases.

[55 FR 11139, Mar. 27, 1990]

APPENDIX G TO SUBPART E OF PART 1980  
[RESERVED]

APPENDIX H TO SUBPART E OF PART 1980—SUGGESTED FORMAT FOR THE  
OPINION OF THE LENDER'S LEGAL  
COUNSEL

(Legal Opinion to be Retyped on Lender's  
Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender)  
\_\_\_\_\_ in connection with a \$ (amount)  
\_\_\_\_\_ (type) \_\_\_\_\_ loan by the (Lender)  
\_\_\_\_\_ (hereinafter "the Lender" to (Bor-  
rower) \_\_\_\_\_ (hereinafter "Borrower")), the

terms of which loans are set forth in a certain Loan Agreement (hereinafter "the Loan Agreement") executed by the Lender and Borrower on (date) \_\_\_\_\_.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.

2. The Loan Agreement between the Lender and Borrower.

3. The Security Agreement executed by Borrower on (date) \_\_\_\_\_.

4. The Guaranty (where applicable) executed on (date) \_\_\_\_\_ by (personal guarantors) \_\_\_\_\_.

5. Financing Statements executed by Borrower and the Lender.

6. Real Estate Mortgages dated \_\_\_\_\_ and executed by Borrower in favor of the Lender.

7. Real Estate Mortgages dated \_\_\_\_\_ and/or other security documents dated \_\_\_\_\_ executed by (personal guarantors) \_\_\_\_\_ in favor of the Bank.

8. The appropriate title and/or lien searches relating to Borrower's property.

9. The pledge of stock and instruments related thereto.

10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

*In Some Circumstances*

11. Lease(s) between Borrower and (lessor's name) \_\_\_\_\_ for the rental of (property being rented) \_\_\_\_\_, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) \_\_\_\_\_ term commencing on (date) \_\_\_\_\_.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) \_\_\_\_\_.

2. Borrower has the necessary corporate power to authorize and has taken the necessary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the "Loan Instruments."

3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) \_\_\_\_\_ given as security for a loan in the amount of \$ \_\_\_\_\_ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) \_\_\_\_\_ given to (secured creditor) \_\_\_\_\_ as security for a loan (state type of loan, i.e., revolving line of credit, \_\_\_\_\_ if known) in the amount of \$ \_\_\_\_\_.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreement has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of re-assignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

[52 FR 6522, Mar. 4, 1987]

#### APPENDIX I TO SUBPART E OF PART 1980—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 ("Disaster Assistance for Rural Business Enterprises") of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial